IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-450

BELLINGHAM STEVEDORING COMPANY,
Petitioner,

vs.

DAMPSKIBSAKTIESELSKABET, *etc., et al.*,
INTALCO ALUMINUM CORPORATION and
AMERICAN METAL CLIMAX, INC.,
Respondents.

BRIEF OF RESPONDENT DAMPSKIBSAKTIESELSKABET and A/S KRISTIAN JEBSENS REDERI IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

M. BAYARD CRUTCHER
THOMAS J. MCKEY
J. CARL MUNDT
BOGLE, GATES, DOBRIN, WAKEFIELD & LONG

14th Floor Norton Building
Seattle, Washington 98104

Counsel for Respondents
DAMPSKIBSAKTIESELSKABET *and A/S*
KRISTIAN JEBSENS REDERI

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-450

BELLINGHAM STEVEDORING COMPANY,

Petitioner,

vs.

DAMPSKIBSAKTIESELSKABET, *etc., et al.*,
INTALCO ALUMINUM CORPORATION and
AMERICAN METAL CLIMAX, INC.,

Respondents.

BRIEF OF RESPONDENT DAMPSKIBSAKTIESELSKABET and A/S KRISTIAN JEBSENS REDERI IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JURISDICTION

Bellingham Stevedoring Company's statement of jurisdiction shows that its petition was filed too late, and that this court does not have jurisdiction.

The statute, 28 U.S.C § 2101(c), provides:

> "Any . . . writ of certiorari intended to bring any judgment or decree in a civil action . . . before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

The time allowed to Bellingham Stevedoring Company to apply for a writ of certiorari, measured from the day its petition for rehearing was denied, expired on September 11, 1972, a week before it filed its application in this court.

REASON FOR DENYING THE WRIT

The Petition for Writ of Certiorari Was Filed Too Late

The sequence of pertinent events, as shown in the petition, was as follows:

1972

March 24	Court of Appeals filed its opinion, judgment entered;
April 4	Bellingham Stevedoring Company filed a timely petition for rehearing;
June 12	Court of Appeals denied the petition for rehearing;
September 11	90-day period expired within which Bellingham Stevedoring Company was entitled to petition the Supreme Court for writ of certiorari;
September 18	Bellingham Stevedoring Company filed its petition for writ of certiorari.

Petitioner seeks review of the judgment of the Ninth Circuit Court of Appeals which was entered in March 24, 1972. That judgment would be the appropriate decision for review had the petition been filed on time. The court's *per curiam* opinion in *Julia Boylan v. United States of America*, 257 U.S. 614 (1921) is as follows:

> "Dismissed for want of jurisdiction, due to failure to apply for writ of error within the statutory period, which began with the date of the entry of the final judgment of the Circuit Court of Appeals, to which the writ of error issued, and not with date of the entry of the judgment in the District Court, under mandate of the Circuit Court of Appeals."

The ninety day period during which Bellingham Stevedoring Company could have filed its petition commenced on June 13, 1972, the day after the Court of Appeals denied the petition for rehearing (Rule 34, Rules of the Supreme Court of the United States). *Citizens' Bank of Michigan City v. Opperman*, 249 U.S. 448, 450 (1919) states:

> "Where a petition for rehearing is entertained, the judgment does not become final for purposes of our review until such petition has been denied or otherwise disposed of, and the three months' limitation begins to run from date of such denial or other disposition."

See also *Morse v. United States*, 270 U.S. 151 (1926), *Gypsy Oil Company v. Escoe*, 275 U.S. 498 (1927), *Federal Trade Com. v. Minneapolis-Honeywell R. Co.*, 344 U.S. 206 (1952) and *United States v. Adams*, 383 U.S. 39 (1966).

The suggestion of hearing *en banc* (Rule 35) which was submitted by Bellingham Stevedoring Company after the denial of its rehearing petition was not considered by the Court of Appeals and did not extend the time period in which to seek review. The order of the Court of Appeals states:

> "Appellant's suggestions of rehearing *en banc* being inexcusably late, we decline to consider it."

The final consideration on the merits occurred on June 12, when the Court of Appeals denied the rehearing petition.

CONCLUSION

The Petition for Writ of Certiorari was not filed within the time required by law. It should be denied.

Respectfully submitted,

M. BAYARD CRUTCHER
THOMAS J. MCKEY
J. CARL MUNDT
BOGLE, GATES, DOBRIN, WAKEFIELD & LONG

14th Floor Norton Building
Seattle Washington 98104

Counsel for Respondents
DAMPSKIBSAKTIESELSKABET and A/S KRISTIAN JEBSENS REDERI

October, 1972